

Panaji, 20th August, 1981 (Savana 29, 1903)

SERIES II No. 21

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA, DAMAN AND DIU

### GOVERNMENT OF GOA, DAMAN AND DIU

#### Department of Personnel and Administrative Reforms

Order

No. 4/6/78-PER(Part)

On placement of her services at the disposal of Delhi Administration, Delhi, by Government of India, Ministry of Home Affairs, New Delhi vide Wireless Message No. U-14020/1/81-UTS dated 25-5-81, the Administrator of Goa, Daman and Diu is pleased to relieve Smt. Suman Swarup, IAS, present Collector of Goa with effect from 14th August 1981 to enable her to join the Delhi Administration.

2. Consequent upon relief of Smt. Suman Swarup, the Administrator of Goa, Daman and Diu is further pleased to transfer and post Shri S. Regunathan, IAS, present Secretary (Revenue), as Collector and District Magistrate of Goa, with effect from the same date. Shri Regunathan shall hold the additional charge of Secretary (Revenue) until further orders.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. H. Mascarenhas, Under Secretary (Personnel).

Panaji, 13th August, 1981.

Order

No. 3/1/80-PER

On placement of his services at the disposal of the Government of Goa, Daman and Diu by the Government of India, Ministry of Home Affairs, vide Wireless Message No. U. 14016/5/81-UTS dated 25-4-1981, the Administrator of Goa, Daman and Diu is pleased to appoint Shri A. K. Seth, IPS (UT-1975) as Superintendent of Police in the Office of the Inspector General of Police with effect from 4-7-1981.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. H. Mascarenhas, Under Secretary (Personnel).

Panaji, 12th August, 1981.

#### Local Administration and Welfare Department

Notification

No. 6-2-77-LSG(68)

Government is pleased to constitute Goa, Daman and Diu Temperance Board to go into the question of Temperance with relation to alcoholic drinks instead of Prohibition with the following members:

1. Hon. Chief Minister — Chairman.
2. Hon. Minister for Social Welfare — Co-Chairman.

3. Secretary (Revenue) — Member.
4. Commissioner (Excise) — Member.
5. Collector, Goa — Member.
6. Inspector Gen. of Police, Panaji — Member.
7. Dean, Goa Medical College, Panaji — Member.
8. Director of Health Services, Panaji — Member.
9. Representative of All India Women's Conference (Goa Chapter) — Member.
10. Representative of Indian Conference of Social Work — Member.
11. Director of Social Welfare, Panaji — Member.
12. Probation Officer-I — Member-Secretary.

#### Non-Official Members

13. Adv. Pandurang Mulgaonkar, Porvorim, Bardez-Goa — Member.
14. Shri Vasudev Krishna Shetye Savoikar, Near Bus-stand, Bicholim — Member.

The functions of the above Board shall be as under: —

1. To frame policy for propagation of temperance in the Union Territory of Goa, Daman and Diu.
2. To periodically review the progress of propaganda regarding temperance in the Union Territory of Goa, Daman and Diu.
3. To advise Government on the question of grant of new liquor licences especially in the vicinity of schools and places of worship.
4. Such other matter as may be useful for the work of temperance in the Union Territory of Goa, Daman and Diu.

Non-official members of the Board are allowed to draw TA/DA as entitled to first class Government officers. The expenditure will be met from the funds of Directorate of Social Welfare, Panaji.

This issues with the concurrence of Finance Department vide their U. O. No. Fin (Exp) 3337 dated 27-6-1981.

By order and in the name of the Administrator of Goa, Daman and Diu.

Alexandre Pereira, Under Secretary (Revenue).

Panaji, 13th August, 1981.

#### Revenue Department

Notification

No. 22/90/81-RD

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. For construction of Fee Collection Booths for Zuari Bridge at Agasaim.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Land Acquisition

Officer, P. W. D. (Cell), Panaji to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji.
2. The Executive Engineer, Works Division XIV, P.W.D., Fatorda, Margao.
3. The Land Acquisition Officer, P. W. D. (Cell), Panaji.
4. The Director of Land Survey, Panaji.

6. A rough plan of the said land is available for inspection in the office of the Land Acquisition Officer, P. W. D. (Cell), Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

#### SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
	Tiswadi	Mercurim	—	88/1	Raghuvir Set Sankar. Pedro Alexander Fernandes.	296.00
				91	Vithalrao Sinai Dempo.	2040.00
				95/4	Vithalrao Sinai Dempo. Pedro Gonsalves.	1502.00
				95/5	Vithalrao Sinai Dempo.	187.00
				96	Renato Noronha.	848.00
				131/4	Joao de Aécneas Carvalho Anthony Marcelo Courtez.	48.00
				131/5	Manual Cunha.	11.00
				131/8	Folandro Carvalho.	189.00
				139/2	Vithalrao Sinai Dempo.	1414.00
				139/6	Fabrica de Igreja de St. Laurence.	900.00
				139/9	Vithalrao Sinai Dempo.	80.00
				139/10	— do —	800.00
				140/1	— do —	623.00
				140/2	— do —	615.00
				140/3	— do —	952.00
				141/10	Comunidade of Mercurim. Simon Dias.	196.00
				141/11	Comunidade of Mercurim. Lourena Palha.	300.00
Total .....						10999.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

*Z. Regunathan*, Secretary (Revenue).

Panaji, 8th August, 1981.

#### Notification

No. 22-121-80-RD

Whereas by Government Notification No. 22-121-80-RD dated 18-11-80 published on page 533 of Series II, No. 37 of the Official Gazette, dated 11-12-80 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for the public purpose viz. Construction of Government Primary School at Molcarnem extension of one room.

And Whereas the appropriate Government (hereinafter referred to as "the Government") is satisfied after considering the report made under sub-section (2) of Section 5A of the said Act, that the said land specified in the schedule hereto

is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, South Goa Margao to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector South Goa Margao till the award is made under Section 11.

**SCHEDULE**  
(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1	Quepem	Molcarnem	—	S. No. 96 Sub-Div. 1	Devalaya of Shree Malkarjun of Molcarnem.  <i>Boundaries:</i> North: Road & S. No. 96/2. South: S. No. 96/1. East: S. No. 96/1, No. 96/2. West: Nala & S. No. 96/2.	1865.00
Total .....						1865.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. Regunathan, Secretary (Revenue).

Panaji, 3rd August, 1981.

Notification

No. 22/147/80-RD

Whereas by Government Notification No. 22/147/80-RD dated 21-2-81 published on page 721 of Series II, No. 49 of the Official Gazette, dated 5-3-1981 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for the public purpose viz. Expansion of Government Coir De-fibring Plant at Cundaim.

And Whereas the appropriate Government (hereinafter referred to as "the Government") is satisfied after considering the report made under sub-section (2) of Section 5A of the

said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, South Goa, Margao to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector, South Goa, Margao till the award is made under Section 11.

**SCHEDULE**  
(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Ponda	Cundaim	—	201 (2 Part)	O: Comunidade of Cundaim. T: Mucunda Guna Gaude.  <i>Boundaries:</i> North: S. No. 201/1 & Nala. South: S. No. 201/2 & Nala. East: Road. West: Nala.	1860.00
Total .....						1860.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. Regunathan, Secretary (Revenue).

Panaji, 8th August, 1981.

Corrigendum

No. 22/7/81-RD

The Schedule to Government Notification No. 22/7/81-RD dated 29-2-1981 published in Official Gazette Series II No. 49

pages 730-731 dated 5-3-1981, shall be substituted by the following schedule.

**SCHEDULE**  
(Description of the said land)

Taluka	Village	Plot	Survey No.	Name of the persons believed to be interested	Approximate area in sq. metres
1	2	3	4	5	6
Salcete	Margao	—	P. T. S. No. 197 and 198 of Chalta No. 4	Shri Adolfo Patrocínio Estevam Gomes and Brothers (near Railway station) Margao-Goa.	28,000.00
			39	<b>Boundaries:</b> East: Comunidade Margao Chalta No. 1 P. T. S. No. 170. West: Area reserved for proposed National Highway (Eastern by pass to Margao City). North: Chalta No. 13 P. T. Sheet No. 171. South: Chalta No. 26, P. T. Sheet No. 199.	
				Total .....	28,000.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

S. Regunathan, Secretary (Revenue).

Panaji, 8th August, 1981.

**Public Health Department**

Notification

No. 45/5/81-PHD

Read: Government Notification No. A-9-67-DHS-6795. Vol. II dated 18-6-1977.

Further to above Notification, in respect of Authorised Medical Attendant, Government is pleased to declare, Senior Gynaecologists attached to the Asilo Hospital, Mapusa and Hospício Hospital, Margao as Authorised Medical Attendants for the purpose of the Medical Attendance Rules 1944.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. S. Sail, Under Secretary (Health).

Panaji, 13th August, 1981.

**Industries and Labour Department**

Order

No. 2-11-79-ILD

Government is pleased to accept the resignation tendered by Shri Pradeep Kumar Toppo, Assistant Engineer (Electrical) in the Electricity Department, with effect from 16-7-1981 A. N.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. D. Sadhale, Under Secretary (Industries and Labour).

Panaji, 13th August, 1981.

Order

No. 28/2/79-ILD/3364

The following Awards given by the Industrial Tribunal, Goa, Daman and Diu are hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Administrator of Goa, Daman & Diu.

S. D. Sadhale, Under Secretary (Industries and Labour).

Panaji, 5th August, 1981.

**IN THE INDUSTRIAL TRIBUNAL GOA, DAMAN AND DIU, AT PANAJI**

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Reference No. IT/65/78

The workmen of  
M/s. Chowgule and Co. Pvt. Ltd.

--- Party-I

V/s.

M/s. Chowgule and Co. Pvt. Ltd.,  
Mormugao Harbour, Goa.

--- Party-II

Workmen/Party-I represented by Adv. Albano Viegas.

Employer/Party-II represented by Shri Ramesh Dessai,  
Labour Advisor.

Panaji: Dated 27-7-81.

**AWARD**

This is a reference made by the Government of Goa, Daman and Diu to this Tribunal under order No. ILD/11610/78, dated 20th November, 1972, which, in the schedule appended to it, reads as follows:

"Whether the action of the management of M/s. Chowgule and Company Pvt. Ltd., Shipbuilding Division, Vasco-da-Gama, Goa in terminating the services of their 35 workmen employed at Sirigao Yard with effect from 26-10-78 on the grounds of closure of the Sirigao Yard is legal and justified?"

Whether the action of the management to terminate the services of the above workers is due to closure of the establishment or it amounts to retrenchment?

Whether the 35 workmen are entitled for the benefits under section 25-H of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

To what further relief, if any, the workmen are entitled to?"

2. The Union representing the workmen, hereinafter referred to as workmen, filed their statement of claim before this Tribunal on 28-2-79, contending, in short, that notice of termination of service dated 29-5-78, served by the management of M/s. Chowgule and Co. Pvt. Ltd., hereinafter briefly called the Employer, on the ground of closure is intended to victimise the workmen for their active part in Trade Union activities and, thereby, weaken the strength of their Union. Such notice is, according to them, illegal, void ab initio and in gross violation of the principles of natural justice. Their services have been terminated on the ground of closure, when there is no closure at all. Also the ground alleged for the closure before the Government is different from the one taken up by the Employer in the course of discussions before the Conciliation Officer. Further, during the conciliation proceedings, notice dated 25-9-78, was served on 35 workmen in which it was stated that the Ship-

building Division of the Company, hereinafter briefly referred to as S.B.D., was to be closed down in phases and, consequently, terminating their services w.e.f. 28-10-78 and, during the pendency of the reference made by the Government, notices dated 8-11-78, were served on 40 workmen terminating their services w.e.f. 11-12-78. The law, it is contended, does not provide for closure in phases and since there is no closure in fact, but only a pretence of closure, the Tribunal should hold that the action of the Employer is mala fide and, therefore, the termination of services of 35 workmen w.e.f. 28-10-78 and, subsequently, of 40 workmen w.e.f. 17-12-78 amounts to retrenchment and since the mandatory provisions regarding procedure for retrenchment has not been followed by the employer, the workmen should be reinstated with full back wages.

3. In its written statement, the Employer raises a Preliminary objection regarding the maintainability of this Reference. It is contended that the Government was aware that the termination of services of the 35 workmen covered under the Order of Reference in question was on the ground of closure of the S.B.D. and, therefore, the Government was bound by the established law in relation to the closure of an establishment. The issue of closure and/or the question of retrenchment arising out of closure cannot be the subject matter of adjudication; That the Government is not entitled to refer the matter of termination of the services of the workmen for adjudication, by artificially framing the issue that the termination amounts to retrenchment and is not due to closure of the establishment. Hence, the second issue under the schedule to the Reference is also bad in law and not maintainable. That the third issue in the schedule is a non-existing dispute; there was no material before the Government, at the time of making the Reference, justifying the formation of the opinion that the Employer/Company has, at the relevant time, recruited new people, side tracking the claim of the 35 workmen so as to entitle the workmen to the benefits of Section 25 H of the Industrial Disputes Act, 1947, hereinafter called the Act. It is submitted that it is neither the case of the workmen nor of the Union that, after the retrenchment of 35 workmen, the Employer/Company has recruited new entrants in contravention to section 25 H of the Act; that the order of Reference was issued without any application of mind and with mala fide intention to block the Company from completing the contemplated closure in phases, and, the order is perverse; and finally the order of reference is in excess of the jurisdiction conferred on the Government and/or without any jurisdiction. It is further contended, that Order of Reference dated 20-11-78, was served on the Management of the Company on 24-11-78; that, subsequent to the termination of services of the 40 workmen under notice dated 10-11-78, the office of the Labour Commissioner, on several occasions, informed the Company's representative, in an informal way, that, in view of the Order of Reference dated 20-11-78, any further retrenchment on account of phased plan of closure would be seriously viewed by the Government and the Company would even face prosecution under Section 33 of the Act. So, the Order of Reference was intended to bring undesirable pressure on the management of the Company to stop implementation of phased plan of closure, as proposed by the Company. The Employer seeks, permission to file written statement on merits, in case the preliminary objection raised is rejected by the Tribunal.

4. In their rejoinder, the workmen maintain the stand taken by them and state that the Company is still functioning, and, therefore, the claim of closure put forth by the Company is mala fide and this would, according to them, justify the Reference.

5. By its application dated 20-3-80, the Employer/Company requested the Tribunal to implead the Government as a party to this Reference, in view of the preliminary objection regarding the maintainability of the Reference and also to direct the Labour Commissioner and Secretary, Industries and Labour to produce before the Tribunal the records maintained by them regarding this proceeding.

Heard the other party on this application, my learned predecessor Dr. Coelho passed order on 18-3-80 granting the application and directing that notice be served on the Government as well as on Labour Commissioner and Secretary, Industries and Labour as prayed for by the employer.

6. Issues were framed by the Tribunal and notice was served on the Government to file their written statement on 11-4-80. Notice was also served on the Labour Commissioner

and Secretary, Industries and Labour to produce the relevant records on 6-5-80. On the date fixed, nobody was present on behalf of the Government although duly served, nor any written statement was filed. My learned predecessor directed fresh notices to be issued to the Government and fixed the case on 6-5-80. On this date too, the Government choose to remain absent. The records called for from the Labour Commissioner and Secretary, Industries and Labour also were not produced. Arguments of the representatives of the parties were heard on the preliminary issues and orders were passed by my learned predecessor on 12-6-80, reserving the decision on the preliminary issues at the time of passing the award on merits of the case. This order was challenged before the Hon'ble Judicial Commissioner's Court by the Employer/Company in Special Civil Application No. 65 of 1980 and it was decided by the Hon'ble Judicial Commissioner, with the consent of the parties, that the preliminary issues framed by this Tribunal be decided first and, accordingly, order was passed on 29-8-80 directing this Tribunal to decide the said issues within a month from the receipt of this Order. However, the copy of this order was produced before me by the employer only on 8-5-81 and a date convenient to both parties was fixed by me for arguments on the preliminary issue.

Although the learned Additional Judicial Commissioner had directed that the matter be disposed of within one month from the order, this was not possible as this Tribunal is not a full time one, but holding limited sittings per month and also because the representatives of the parties could not find an earlier date suitable to both of them.

7. The following preliminary issues were framed by the Tribunal and the representatives of both the parties heard, at length, on them:

1. Does the II Party prove that the issue of closure of the Establishment or the question of Retrenchment out of closure cannot be a subject matter of adjudication by this Tribunal?

2. Does the II Party prove that the Government is not entitled to refer the matter of termination of services of the workmen for adjudication on the ground that termination amounts to retrenchment and is not due to closure of the Establishment?

3. Does the Party II prove that the III Term of Reference is a non-existing dispute?

4. Does the II Party prove that the Order of Reference is issued in excess of jurisdiction and/or without any jurisdiction?

8. The sum and substance of the arguments of Shri Ramesh Dessai, appearing on behalf of the Employer/Company, is that the Reference in question is not maintainable at all, because the Government was informed, in due time, by the Company, before notice of termination of services was served on the concerned workmen, that the S.B.D. was going to be closed in phases w.e.f. 28-10-78, and, therefore, could not refer the matter for adjudication to the Industrial Tribunal, as it is established law that the issue of closure and/or the question of retrenchment arising out of such closure cannot be subject matter of adjudication.

In so far as the 3rd issue of the schedule appended to the order of reference is concerned, he argues that it is a non-existing dispute and the Government had no material before it to form an opinion regarding the applicability or not of Section 25 H of the Act. Therefore, he contends that the order of reference in question has been issued without any jurisdiction or in excess of the jurisdiction conferred on the Government by the Act and also without any application of mind and with mala fide intention to block the Company from completing the contemplated closure in phases as per the decision of the management. He has relied on various decisions of the Supreme Court and High Court to which I shall refer later, while appreciating the contentions of Shri Ramesh Dessai.

9. On the other side, Adv. Viegas argues that the Government is perfectly justified in referring the issues mentioned in the schedule for adjudication to this Tribunal because, according to him, the S.B.D. is not closed and the ground of closure alleged by the Company is only a pretence of closure to victimise the workmen by retrenching them from service. He agrees with the contention of the representative of the Company that it is an established law that the issue of closure of business in itself cannot be a subject matter of adjudication, but he contends that this happens only when

there is a bonafide closure and not when there is a pretence of closure or there is no closure at all, as is in the present case. He further contends that the law does not contemplate a closure in phases. He too has relied on some rulings of the Supreme Court and High Court to which I shall refer in the course of this Award.

10. It is an admitted fact that the Employer/Company, by its letter dated 25-8-78 addressed to the Secretary, Industries and Labour, informed the Government under Section 25 FFA of the Act that they had decided to close down their S.B.D. at Sirigao and w.e.f. 28-10-78 for the reasons explained in the Annexure and that the number of workmen whose services are to be terminated on account of the closure of the undertaking is 269. The reasons adduced in the Annexure for the closure of the undertaking is that they are unable to continue operation due to hostile and dangerous social atmosphere in the neighbourhood.

It is also not disputed that, in pursuance of the decision taken by the Company to close down the S.B.D., notice dated 25-9-78 was served on 35 workmen of S.B.D. terminating their services from 28-10-78, and another notice dated 8-11-78 (vide Exh. F) was served on 40 workmen of S.B.D. terminating their services from 12-12-78.

11. Regarding his contention that the first two issues in the schedule to the order of reference are not maintainable at all, Shri R. Dessai has relied on the following rulings of the Supreme Court:

(i) *Excel Wear V/s. Union of India*, reported in F.J.R. 1978, Vol. 53, page 430. In this case, the Supreme Court has held that the right of the Employer to close down his business is an integral part of his right as to carry it on. It is a fundamental right embedded in the right to carry on business guaranteed under Article 19(1)(g) of the Constitution. But, as no right is absolute in its scope, this right too can be restricted, regulated or controlled by law in the interest of general public: "Public interest and social justice do require the protection of the labour. But a situation may arise, both from the point of view of law and order and the financial aspect, that the employer finds it impossible to carry on the business any longer. He must not be allowed to be whimsical or capricious in the matter ignoring the interests of the labour altogether. But that can be remedied by awarding different slabs of compensation in different situations. It is not correct to say that because compensation is not a substitute for the remedy of prevention of employment, the latter remedy must be the only one. If it were so, then in no case closure can be or should be allowed. It is not always easy to strike a balance between the parallel and conflicting interests. Yet it is not fair to unreasonably tilt the balance in favour of one interest by ignoring the other. No jurisprudence of any country recognises that the concept of injury is widened and the area of restraint is broadened to an extent that it may result in the annihilation of the person affected by the restraint. Not to permit an employer to close down his business is essentially an interference with his fundamental right to carry on the business."

This ruling has also referred to the decision of the Supreme Court in the *Pieprach Sugar Mills Ltd., Vs. Pieprach Sugar Mills Mazdoor Union*, 1956 II FJR, 262; 1956 S.C.R. 872, where it was opined that where an industry was closed and the closure was real and bona fide, there cannot be an industrial dispute after closure.

(ii) *Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and others* (FJR, 1979, S.C. Vol. 55, page 511). It was held in this ruling by the Supreme Court that the propriety of or justification for closure of a business in fact and truly effected, cannot raise an industrial dispute as contemplated by State and Central Acts.

(iii) *Tata Nagar Fondary Co. Ltd., Vs. Their Workmen* (FJR 1970 Vol. 38, page 16). Here, the Supreme Court has held that, in case of closure, the Employer does not merely close down the place of business, but he closes the business finally and irrevocably. The closure has to be genuine and bonafide in the sense that there should be a closure in fact and not a mere pretence of a closure. The motive behind the closure is not material and what is to be seen is whether it is an effective one. Where

there has in fact been a closure, the Industrial Tribunal would not be entitled to find that there was only a lock out.

(iv) *Workmen of Straw Board Manufacturing Co. Ltd., Vs. Straw Board Manufacturing Co. Ltd.* (FJR, 1974, Vol. 45, page 267). Here, the Supreme Court, while dealing with the question of the closure of the factory in stages and motives behind such closure, has made the following observation: Once, it is held that there has been a closure, the motive of the Employer ordinarily ceases to be relevant and no employer can be compelled to carry on its business if he chooses to close it down in truth and reality for reasons of his own; the fact that the closure is effected in stages will not be material, as it is not always possible to immediately shut down a Mill or concern with different processes of work, even though a decision to close the same may have irrevocably been taken. It cannot, therefore, be contended that there was no closure, but retrenchment when the first batch of workmen were sent away.

It is to be noted that in this case, as in our case, decision to close down the mill was taken sometime before; the Government and the Union were informed about it; notice of closure was published, stating that the first batch of 98 workmen will be discharged on 7-5-67; notice of termination of service were also served on these workmen individually; and finally services of these workmen were terminated w.e.f. 7-5-67. The only difference is that the Mill was finally closed on 28-7-67, while, in our case, the undertaking is still functioning.

The Supreme Court rejected the contention of the learned counsel for the Appellant that there was no closure on 7-5-67 when the first batch was discharged and, therefore, their discharge should be treated as retrenchment for payment of necessary compensation and held that the termination of the services of 98 workmen which was about three months earlier to effective closure of the Mill is not at all relevant in the context of this case which is one of closure of an independent unit. It is observed in this judgement by Justice Goswami: "It is no longer open to the Employer to plead that there can be no industrial dispute with regard to the eligibility of the workmen to compensation or to its quantum on closure of an establishment, although the factum of a real and genuine or legitimate closure, admitted or proved, is outside the pale of industrial adjudication not partaking or fulfilling the content of an industrial dispute within the meaning of Section 2(k) of the Central Act. If, however, the closure is a masquerade, the matter still stand on a different footing."

12. From the above quoted rulings, one can say that the Supreme Court has consistently held that, once the establishment is really and genuinely closed, the motive behind such closure ceases to be relevant; and that the factum of a real, genuine or legitimate closure is outside the pale of industrial adjudication. It is also held by the Supreme Court, in the case of *Straw Board* cited above, that the closure of an establishment in phases does not contravene the provisions of the Act, once a decision has been irrevocably taken to close it down completely.

13. Let us see, now, whether issues nos. 1 and 2 of the schedule annexed to the reference are maintainable and whether this Tribunal has jurisdiction to entertain them.

It is not disputed that the Employer/Company had informed the Government in due time about its intention to close down effectively and by stages the S.B.D. w.e.f. 28-10-78. Although the notice sent to the Government does not clearly mention the management's intention to close down the S.B.D. by stages and when, i.e., on what date would be the final stage, the Employer has stated in paras 7 and 8 of its written statement that, subsequent to the issue of the said notice to the Government, meetings were held in the Office of the Labour Commissioner from time to time between the Labour and Management and, in those meetings, it was explained to the Government that, though the closure decision was influenced on account of intentional lethargy, sluggishness, adverse trade relations and hostility surrounding the Sirigao area, the decision of closure of the entire S.B.D. would be implemented in a phased manner, taking into consideration the commitments the company had to fulfil and, in pursuance of this policy, notice of termination of service of 35 workmen was issued to start with.



The workmen, in their rejoinder, have not specifically denied these facts, although in para 5, there is a general denial of paras 7, 8, and 9 of the written statement, stating that the intention of the Employer being malafide and with ulterior motives, the Tribunal can go into and judicially scrutinize the issue.

Also the Government, who has been impleaded as a party to this reference, has not filed any written statement denying the facts mentioned in paras 7 and 8 of the written statement of the Company.

We have to hold, therefore, that the Government was aware of the intention of the Employer to effectively close down the S.B.D. in phases w.e.f. 28-10-78 and that, in pursuance of this policy, to start with, notice of termination of services to the 35 workmen mentioned in the schedule was issued. Subsequently, on 8-11-78 (vide Exh. F) notice of termination of services was served on another batch of 40 workmen w.e.f. 12-12-78.

The order of reference is dated 20-11-78, and the Government, at the time of making it, could never expect to find the S.B.D. closed, since the Company had already informed that it would be closed in phases w.e.f. 28-10-78. Therefore, the reference made by the Government as far as issues nos. 1 and 2 of the schedule are concerned, asking whether the termination of services of the 35 workmen w.e.f. 28-10-78, on the ground of closure is legal and justified and whether it is due to the closure of the establishment or amounts to retrenchment is obviously malafide. It appears that what the Government intended by referring the matter to the Industrial Tribunal, is to bring pressure on the management of the Company to stop the implementation of the phased plan of closure, as it is rightly contended by the Company in para 10 of their written statement. And we should say that the Government succeeded in its plan, because the Company stopped further implementation of the plan, fearing criminal prosecution for violation of Sec. 33 of the Act, as, according to the Company, the Labour Commissioner Office, on several occasions, had informed the Company's representative, in an informal way, that, in view of the order of reference, any further retrenchment on account of phased plan of closure would be viewed seriously by the Government and, the Company prosecuted for violation of the provision of Sec. 33 of the Act. This fact, asserted by the Company in para 10 of its written statement, has not been denied by the Government by putting in any written statement.

And this threat given by the Government, argues Shri Dessai, considered along with the ruling of the Supreme Court in Bhavanagar Municipality Vs. Alibai Kanibai and others (FJR, Vol. 51, 1977 page 328) holding that the closure of a Division or Department during the pendency of a dispute may amount, in some cases, to alteration of conditions of service of the concerned workmen and make the employer liable for prosecution for contravention of Section 33 of the Act, r/w the decision in Hathisingh Manufacturing Company Ltd. and others V/s. Union of India and others (FJR Vol. 13, page 181), acted effectively on the mind of the Employer/Company and led them to drop the implementation of their plan of phased closure till the decision of the dispute by this Tribunal.

14. Shri Viegas contends that there was no reason for the Employer/Company to close down its business of S.B.D. and that the alleged closure is only a pretence of closure and not a real closure, as the Company is still functioning. He has relied on the following rulings:

(i) Kalinga Tubes Ltd. Vs. Their Workmen (LLJ Vol. I, 1969 page 557). In this ruling it was held by the Supreme Court that what matters "is the factum of closure by whatever reasons motivated". This ruling refers to another decision of the Supreme Court in Indian Hume Pipe Co. Ltd. Vs. Their Workmen (1969 I LLJ, 242) in which the question was whether the closure of the factory of Bazakar in West Bengal was illegal and unjustified. The Tribunal, while holding that the factory had been actually closed down, went into the question as to whether the closure of the factory was bonafide and justified. Mitter Justice, speaking for the Court, said at page 245: "In our opinion, it was not open to the Tribunal to go into the question as to the motive of the Appellant in closing down its factory at Bazakar and to inquire whether it was bonafide or malafide with some oblique purpose, namely, to punish

the workmen for Union activities in fighting the Appellants". It was emphasized that the expression bonafide used in certain decisions of the Supreme Court, did not refer to the motive behind the closure, but to the fact of closure.

I fail to understand as to how this ruling helps Shri Viegas, in supporting his case. Since, the motive for the closure is immaterial, the contention of Shri Viegas that the Company had alleged one motive to the workmen and another to the Government regarding the closure of the business, even assuming to be true, is of no use, once the undertaking is closed. In our case, the undertaking is not closed for the reasons, we assume, of the order of reference made by the Government and not for the fault of the Employer/Company.

(ii) Hari Prasad Shiv Shankar Shukla and another V/s. A. D. Divekar and others and Barsi Light Railway Company Ltd. V/s. K. N. Jogekar and others. (FJR 1956-57, S. C. Vol. II, page 370). In this ruling, it was held that retrenchment as defined in Section 2(00) of the Act, has no application where the services of the workmen are terminated by the Employer on a real and bonafide closure of the business or where the services are terminated on account of the business or undertaking being taken over by another Employer.

(iii) Banaras Ice Factory Ltd. V/s. workmen (FJR 1956-57, S. C. Vol. II, page 333). Here, the Supreme Court has held that the word 'discharge' in Section 22(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950 (which corresponds, with some variations, to Sec. 33 of the Act) applies only to discharge of a person in a running or continuing industry and not to the discharge of all workmen on bonafide closure of the industry. But, observes the Supreme Court: If there is no closure, but a mere pretence of a closure, or it is malafide, there is no closure in the eye of law and the workmen can raise an industrial dispute and may even complain under Sec. 23 of the Act.

The above two rulings also have no bearing in our case, because here there is no closure of the undertaking for reasons not attributed to the Company and, therefore, it is premature to judge whether the intended closure is bonafide or malafide.

(iv) Hotel Ambassador V/s. Its Workmen and others (I FLR Vol. 7, 1963, S. C. page 140). In this ruling, the Supreme Court held that once it is considered that there was an occasion for effecting economy, the conclusion is inescapable that the conduct of the employer in closing the department and dividing its work amongst its other employees cannot be reasonably characterised as improper or as amounting to unfair labour practice.

I, do not see how this ruling supports Shri Viegas' contention.

(v) Jaya Bharati Tile Works V/s. State of Madras and others (LLJ, 1952, Vol. 2, Madras H. C., page 587). In this ruling, the Madras High Court, held that the Court will have jurisdiction to go into the question whether a closure is in fact an illegal lock out or a subterfuge adopted by the Employer to bring the employees down to their knees.

This ruling also does not help Shri Viegas, because it presupposes closure of the business and, in our case, it is admitted that there is no such closure.

15. I, therefore, hold that the Reference made by the Government to this Tribunal on the above two issues, when the Company was in the process of closing its business by stages, is premature. If the Company did not disclose in its notice to the Government the final date of its phased closure, the Government could have got it from the Company and only after the expiry of that date, refer the matter to the Tribunal, because only then the Tribunal would be in a position to know as to whether the Company was effectively closed or whether the alleged closure was a ruse or a pretence.

At this stage, the Reference made by the Government regarding the first two issues in the schedule is bad in law, not maintainable and, therefore, this Tribunal has no jurisdiction to entertain it.

16. In so far as the 3rd issue is concerned, contends Shri Dessai that it is neither the case of the workmen, nor of

the Union that the Employer/Company has recruited new people side-tracking the claim of the 35 workmen covered by the Order of Reference, in contravention of Section 25 H of the Act. Therefore, the Government had no material before it to reasonably apprehend that there was a dispute on this issue between the workmen and the employer Company (vide para 2(1) of the written statement of the Company, which has not been denied by the Government). He relies for this purpose in the ruling of the Orissa High Court, in Secretary Cuttack Motor Association and another Vs. State of Orissa and others (LLJ, 1973, Vol. II, page 547), wherein it was held that the power to make an Order of Reference under Section 10(1)(d) of the Act, arises only when necessary opinion required thereunder is formed by the appropriate State Government with respect to the existence or apprehension of an industrial dispute. The opinion is to be formed before the Order of Reference is made.

And, in fact, I fail to see as to how the Government had formed an opinion to base the reference to the Tribunal regarding the 3rd issue in the schedule, when there was no

material before it to apprehend an industrial dispute in this connection. The assertion made in para 2(d) of its written statement "that the order of reference was issued without any application of mind and with malafide intention to block the Company from completing the contemplated closure in phases as per the decision of the management", appears to be correct.

16. In the premises above, my reply to the Reference made by the Government is as follows:

The Reference in issues nos. 1 and 2 of the schedule is premature and, therefore, not maintainable.

The Reference in issue No. 3 is bad in law and in excess of the jurisdiction conferred on the Government by law.

*Dr. Renato de Noronha*  
Presiding Officer,  
Industrial Tribunal.